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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re VALENTINO R., A Person Coming
Under the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

VALENTINO R.,

Defendant and Appellant.

H024840

(Santa Clara County
Superior Court
No. J121181)

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The Santa Clara County District Attorney's Office filed an amended petition under Welfare and Institutions Code section 602, which alleged that the minor, Valentino R., committed second degree robbery (Pen. Code, §§ 211-212.5),¹ assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(1)), battery (§§ 242-243), giving a false name to a police officer (§ 148.9), possession of alcohol while under the age of 21 (Bus. & Prof. Code, § 25662, subd. (a)), and possession of an item with intent to commit vandalism or graffiti (§ 594.2). The petition further stated that the People would seek to increase the maximum term of confinement based upon Welfare and Institutions Code section 726. After appellant admitted giving a false name to a police officer

and possession of alcohol while under the age of 21, the prosecutor dismissed the possession of an item with intent to vandalize count. The juvenile court then sustained the petition as to the counts admitted by appellant, and declared him a ward of the court pursuant to Welfare and Institutions Code section 602.

Following a jurisdictional hearing, the juvenile court sustained the petition as to the remaining counts. The juvenile court committed appellant to Trinity Anza, an alternative placement to the California Youth Authority, for a maximum period of confinement of eight years and eight months.

On appeal, appellant contends: (1) there was insufficient evidence to support the juvenile court's findings as to the robbery count; and (2) the trial court erred in calculating the maximum period of confinement. We modify the order to reduce the maximum term of confinement to eight years. In all other respects, the order is affirmed.

I. Statement of Facts

At approximately 11:30 p.m. on May 9, 2002, Baljinder Klair and Malkit Singh were working as cashiers at Econo Liquors. While they were talking behind the counter, appellant and two companions entered the store. Each took an 18-pack of Budweiser beer and tried to leave without paying. The first minor successfully left the store. Appellant said "good-bye" to Klair and Singh as he left. Klair and Singh then chased the minors. Klair caught the third minor, William H., by the collar. William had dropped his beer just outside the door. As William struggled to escape, Singh helped Klair pull him back towards the store. Singh then went to call the police.

As Klair continued to drag William back towards the store, appellant and the other minor dropped their beer 10 to 15 feet away and returned. They knocked Klair to the ground, and punched and kicked him. Klair continued to hold

¹ All further statutory references are to the Penal Code unless otherwise stated.

William. Singh saw the minors beating Klair, grabbed a gun, ran outside, and pointed the gun at appellant and the other minor. They ran away. Singh gave the gun to Klair, who pointed it at William. The police arrived and recovered two of the three cases of beer.

II. Discussion

A. Sufficiency of the Evidence

Appellant contends that there is insufficient evidence of robbery. He claims that no force was used until after William dropped the beer outside the door. Thus, he asserts that he committed a petty theft and an assault or battery, because he did not use force to accomplish the taking of William's beer or the beer that he had taken. We disagree.

“In considering a claim of insufficiency of evidence, a reviewing court must determine ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ [Citations.] Where, as here, the [trier of fact's] findings rest to some degree upon circumstantial evidence, we must decide whether the circumstances reasonably justify those findings, ‘but our opinion that the circumstances also might reasonably be reconciled with a contrary finding’ does not render the evidence insubstantial. [Citation.]” (*People v. Earp* (1999) 20 Cal.4th 826, 887-888.) The identical standard of review applies to a juvenile appeal. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.)

Robbery is “the felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear.” (§ 211.) “Robbery is an offense against the person who has either actual or constructive possession over the goods. [Citation.] Thus, a store employee may be a victim of robbery even though he does not own the property taken and is not in charge or in immediate control of the

property at the time of the crime. [Citations.]” (*People v. Estes* (1983) 147 Cal.App.3d 23, 26.)

“The taking element of robbery itself has two necessary elements, gaining possession of the victim’s property and asporting or carrying away the loot. [Citation.]” (*People v. Cooper (Cooper)* (1991) 53 Cal.3d 1158, 1165.) In determining the duration of a robbery, it is necessary to focus on the duration of the asportation. Though the asportation element is satisfied by evidence of slight movement, asportation is not confined to a fixed location or a fixed point in time, but continues until the robber has carried away the property to a place of temporary safety. (*Ibid.*) As noted by the California Supreme Court in *Cooper*, this reasoning has supplied the basis for a long line of cases “holding that mere theft becomes robbery if the perpetrator, having gained possession of the property without use of force or fear, resorts to force or fear while carrying away the loot. [Citations.]” (*Cooper* at p. 1165, fn. 8, and cases there cited.) To constitute the crime of robbery, however, the use of force must be motivated by an intent to steal. (*People v. Green* (1980) 27 Cal.3d 1, 54.)

Here appellant and his companions took three packs of beer from the store. When Klair grabbed William, appellant was 10 to 15 feet away from them and he immediately returned to beat Klair. Appellant never reached a place of temporary safety. (See *People v. Flynn* (2000) 77 Cal.App.4th 766, 772 [scene of the crime is not a place of temporary safety when the victim remains present]; *People v. LaStelley* (1999) 72 Cal.App.4th 1396, 1401[attack on security guard after the defendant removed stolen property]). It was only when Singh returned with the gun that appellant left the scene with a pack of beer, thus terminating the robbery. Accordingly, appellant’s use of force occurred during the course of the robbery and was not an assault separate from the theft.

B. Maximum Period of Confinement

Appellant next contends, and the People concede, that his maximum period of confinement should be reduced to eight years.

Welfare and Institutions Code section 726 provides in relevant part: “If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the ‘maximum term of imprisonment’ shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code”

Section 1170.1, subdivision (a) provides that when a person is convicted of two or more felonies the “aggregate term of imprisonment for these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1.” Section 1170.1 limits the subordinate terms to one-third of the middle term for each subordinate felony and/or misdemeanor conviction. (*In re Claude J.* (1990) 217 Cal.App.3d 760, 764-765.)

Pursuant to Welfare and Institutions Code section 726 and section 1170.1, subdivision (a), here appellant’s maximum term of confinement on the current petition is five years and four months. The term of confinement is calculated as follows: five years on the second degree robbery count (§§ 211-212.5, subd. (c)); no time for the assault (§ 245, subd. (a)) and battery counts (§§ 242-243, subd. (a)) counts;² two months for the giving a false name to a peace officer count (§ 148.9);

² “[T]he 1977 amendment of Welfare and Institutions Code section 726 specifically requires aggregate confinement be imposed in accordance with section 1170.1, subdivision (a), which in turn is expressly subject to section 654. Thus, section 654 is statutorily applicable to juvenile court sentencing where the court elects to aggregate.” (*In re Billy M.* (1983) 139 Cal.App.3d 973, 978.) Here section 654 applies to the assault and battery counts.

and two months for the possessing alcohol under the age of 21 count (Bus. & Prof. Code, § 25662, subd. (a)).³

Here when the juvenile court calculated the maximum term of confinement it decided to aggregate appellant's term based on previously sustained petitions. Appellant's maximum term of confinement on the previously sustained petitions is two years and eight months. The term of confinement is calculated as follows: eight months for bringing or possessing a weapon on school grounds (§ 626.10);⁴ eight months for vandalism of four hundred dollars or more (§ 594, subdivision (a)); eight months for two counts of vandalism of less than four hundred dollars (§ 594, subd. (a)); and eight months for two counts of escape from a juvenile facility (§ 871, subd. (a)).

An appellate court may correct the unauthorized term of confinement without remand to the juvenile court. (*In re Ricky H.* (1981) 30 Cal.3d 176, 191.) Thus, here appellant's maximum term of confinement must be reduced from eight years and eight months to eight years.

III. Disposition

We modify the order to reduce the maximum term of confinement to eight years. In all other respects, the order is affirmed.

³ Section 19 provides: "Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars (\$1,000), or by both."

⁴ Section 18 provides in relevant part: "Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years"

Mihara, J.

WE CONCUR:

Rushing, P.J.

Elia, J.